IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WA.No. 700 of 2007()

AGAINST THE JUDGEMENT IN WPC.8433/2007 Dated 14/03/2007
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APPELLANT:PETITIONER IN THE W.P(C)

GANESAN V.P., S/O.T.GOPALAN NAMBIAR,
AGED 30 YEARS, RESIDING AT
'THILAKOM', KANDAKKAI,
MAYYIL, KANNUR 670 602.

BY ADV. SRI.C.UNNIKRISHNAN (KOLLAM)

RESPONDENTS:RESPONDENT IN THE W.P.(C)
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1. **STATE OF KERALA REP. BY SECRETARY TO GOVT, TAXES DEPT., SECRETARIAT, TRIVANDRUM.**

2. **THE COMMISSIONER OF EXCISE, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**

3. **JOINT EXCISE COMMISSIONER, COMMISSIONERATE OF EXCISE, THIRUVANANTHAPURAM.**

4. **KERALA PUBLIC SERVICE COMMISSION REP.BY ITS SECRETARY, PSC OFFICE, PATTOM. P.O, THIRUVANANTHAPURAM.**

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC
GOVERNMENT PLEADER SRI.BENNY GERVASIS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC, JJ.
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W.A. NO. 700 OF 2007
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Dated this the 16th day of March, 2007

J U D G M E N T

P.R.Raman, J.

The appellant is the writ petitioner in WP(c) No.8433/2007. He is a candidate next in the order of priority in the ranklist published by the Kerala Public Service Commission for the post of Excise Inspector. According to him by virtue of Exhibit P3 judgment passed by this Court, one Sri.Raju, who was the Excise Inspector is recommended to be promoted to the post of Circle Inspector by the proceedings of the DPC. In fact Government have approved the seniority list accepting the judgment by Ext.P7. However, even Ext.P7 was issued pursuant to an interim order-Ext.P5 in a writ petition now pending before this Court. But it is an admitted fact that the basic judgment Ext.P3 rendered by the Division Bench of this Court is pending in appeal before the Apex Court. In the Special Leave Petition now pending before the Apex Court, the petitioner is one Sri.K.A.Babu and the Apex Court has already granted leave to file the SLP as per its order dated 7/3/07. As of now, no order promoting Sri.Raju has been issued by

the Appointing Authority.

2. The learned counsel appearing for the appellant would contend that there is every likelihood that Sri.Raju will be appointed as Circle Inspector in which case when the resultant vacancy in the post of Excise Inspector would arise and he would have a fair chance of being appointed, he being the next in the ranklist. But the learned Single Judge rightly held that though it may be that one vacancy may arise if ultimately Ext.P3 judgment is affirmed by the Apex Court and the appellant in Ext.P3 is promoted retrospectively. But this will be a notional vacancy and not an actual vacancy. One cannot now say definitely what ultimately will take place. At any rate, unless it is established that a vacancy has already arisen as on date, a direction to report a vacancy cannot be made by this Court in exercise of its power under Article 226 of the Constitution of India. In these circumstances, the learned Single Judge declined to give any such direction. It is against the said writ petition that the present appeal is filed. From the narration of the facts , there is no error of law. We do not find any good reason to interfere with the

judgment impugned in this appeal. The view taken by the learned Single Judge is correct in law. Accordingly, we find no merit in this appeal. Dismissed.

P.R.RAMAN, JUDGE.

ANTONY DOMINIC, JUDGE.

Rp